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| 09/903,255 | 07/11/2001 | Carl-Eric Kaiser | CM2388 | 9451 |

27752 7590 12/28/2004

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| EXAMINER |
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MCKANE, ELIZABETH L

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| ART UNIT | PAPER NUMBER |
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1744

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/903,255

Applicant(s)

KAISER, CARL-ERIC

Examiner

Leigh McKane

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

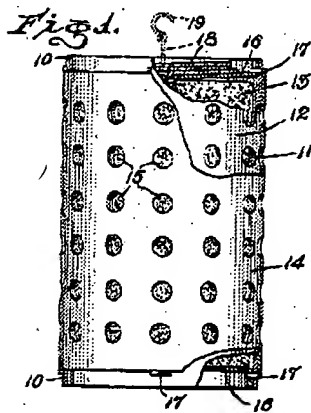
Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-7, 9, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meek (U.S. Patent No. 2,738,225) in view of Kurz (DE 19532169) and Lee et al (U.S. Patent No. 5,008,115).

Meek teaches a method of deodorizing using an air-treatment material diffuser device 10 for containing a plurality of particles containing a volatile material (col.2, lines



6-8). The container may be fabricated of rigid materials (col.2, lines 40-43) and is openable and closeable. Although not specifically stated by Meek, it is obvious and necessary that the holes 15 must be smaller than the particles, otherwise the particles would fall out, thereby destroying the purpose of the device. Meek does not disclose using the device to

deodorize or fragrance an environment which is sometimes wet and sometimes dry.

Moreover, as Meek fails to teach any particular volatile material, Meek does not disclose that the particles contain perfume ingredients having a boiling point of greater than about 250 °C and a ClogP of greater than 3.

Kurz discloses use of a perfume dispenser within a sauna, wherein the dispenser includes a source of perfume 23 and a label 27 with writing thereon.

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It would have been obvious to one of ordinary skill in the art to use the dispenser of Meek within a sauna environment, as Kurz discloses that bathroom environments are sources of odors.

The limitations within the phrase “ usage instructions to place said device inside an environment” (claims 2 and 3) are not given any patentable weight because the claim language refers to the pictures or markings on a material and these features are not held to be patentable (see M.P.E.P. 706.03(a)). Therefore, the claims have been interpreted to include any writing. As the label of Kurz includes writing thereon, it meets the claim limitations.

As to including writing and/or a label on the device of Meek, it is known in the art to place labels indicating the name of the product, ingredients, price, etc. on consumer products and would have been obvious in Meek.

Lee et al discloses uniform, spherical, polymeric particles that contain a volatile active ingredient, such as perfume, fragrance, and essential oils (col.4, lines 16-25; See Example 7). The particles provide controlled release of volatile fragrances or perfumes. See col.2, lines 7-9. Perfumes exhibited by Lee et al include cinnamaldehyde (col.4, line 30). Cinnamaldehyde, also known as amyl cinnamic aldehyde, has a boiling point of 285 °C and a ClogP of 4.324, as disclosed in Applicant's specification, page 6. It would have been obvious to use the polymeric particles of Lee et al in place of the granular pumice or other absorbent material of Meek, as Lee et al teaches that the polymeric particles provide a more controlled release of active ingredient. Furthermore, it would have been obvious to the skilled artisan to choose an appropriate fragrance, as is common in the art.

With respect to the amount of treatment material to be included within the apparatus of Meek, it is deemed obvious to optimize the amount based upon the desired effect of the device and based upon the particular treatment material used.

3. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meek, Kurz, and Lee et al as applied to claim 3 above, and further in view of Moore (U.S. Patent No. 5,935,526).

The holes in the container of Meek are all of substantially the same size. Moore, however, teaches a similar type of dispensing device wherein the "size and number of apertures **25** and **27** may be selected to increase or decrease the amount of ambient air which circulates through and around" the volatile material. See col.5, lines 11-14. Given this teaching, it is deemed obvious to fabricate the device of Meek having holes of any determined size in order to optimize the characteristics of the device.

4. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meek, Kurz, and Lee et al as applied to claim 3 above, and further in view of Ramkissoo (U.S. Patent No. 5,240,653).

The combination *supra* is silent with respect to using different perfumed particles. Ramkissoo evidences that it was known in the art of air fresheners to include more than one fragrance within a single dispenser. See col.5, lines 7-10 and Figure 10. Note specifically that Ramkissoo teaches use of perfumed particles in basket **12a** and a liquid deodorant in basket **12c**. As the inclusion of more than one type of fragrance and/or treatment medium is known in the art, it would have been obvious in the device of Meek.

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5. Claims 13, 14, 16, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meek in view of Lee et al.

Meek teaches an air-treatment material diffuser device 10 for containing a plurality of particles containing a volatile material (col.2, lines 6-8). The container may be fabricated of rigid materials (col.2, lines 40-43) and is openable and closeable. While Meek does not specifically teach that the volatile material is a perfume, it is generally known in the art of air-treating that “volatile air-treatment materials” refer to deodorants, perfumes, insecticides, and medicaments, and the use of a perfume in the apparatus of Meek would have been obvious. Meek fails to teach any particular volatile material, and thus does not disclose that the particles contain perfume ingredients having a boiling point of greater than about 250 °C and a ClogP of greater than 3.

Lee et al discloses uniform, spherical, polymeric particles that contain a volatile active ingredient, such as perfume, fragrance, and essential oils (col.4, lines 16-25; See Example 7). The particles provide controlled release of volatile fragrances or perfumes. See col.2, lines 7-9. Perfumes exhibited by Lee et al include cinnamaldehyde (col.4, line 30). Cinnamaldehyde, also known as amyl cinnamic aldehyde, has a boiling point of 285 °C and a ClogP of 4.324, as disclosed in Applicant’s specification, page 6. It would have been obvious to use the polymeric particles of Lee et al in place of the granular pumice or other absorbent material of Meek, as Lee et al teaches that the polymeric particles provide a more controlled release of active ingredient. Furthermore, it would have been obvious to the skilled artisan to choose an appropriate fragrance, as is common in the art.

With respect to the amount of treatment material to be included within the apparatus of Meek, it is deemed obvious to optimize the amount based upon the desired effect of the device and based upon the particular treatment material used.

6. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meek in view of Lee et al and Moore.

Meek teaches an air-treatment material diffuser device 10 for containing a plurality of particles containing a volatile material (col.2, lines 6-8). While Meek does not specifically teach that the volatile material is a perfume, it is generally known in the art of air-treating that “volatile air-treatment materials” refer to deodorants, perfumes, insecticides, and medicaments, and the use of a perfume in the apparatus of Meek would have been obvious. Meek fails to teach any particular volatile material, and thus does not disclose that the particles contain perfume ingredients having a boiling point of greater than about 250 °C and a ClogP of greater than 3.

Lee et al discloses uniform, spherical, polymeric particles that contain a volatile active ingredient, such as perfume, fragrance, and essential oils (col.4, lines 16-25; See Example 7). The particles provide controlled release of volatile fragrances or perfumes. See col.2, lines 7-9. Perfumes exhibited by Lee et al include cinnamaldehyde (col.4, line 30). Cinnamaldehyde, also known as amyl cinnamic aldehyde, has a boiling point of 285 °C and a ClogP of 4.324, as disclosed in Applicant’s specification, page 6. It would have been obvious to use the polymeric particles of Lee et al in place of the granular pumice or other absorbent material of Meek, as Lee et al teaches that the polymeric particles provide a more controlled release of active ingredient. Furthermore, it would

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have been obvious to the skilled artisan to choose an appropriate fragrance, as is common in the art.

The holes in the container of Meek are all of substantially the same size. Moore, however, teaches a similar type of dispensing device wherein the "size and number of apertures 25 and 27 may be selected to increase or decrease the amount of ambient air which circulates through and around" the volatile material. See col.5, lines 11-14. Given this teaching, it is deemed obvious to fabricate the device of Meek having holes of any determined size in order to optimize the characteristics of the device.

7. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ramkissoo (U.S. Patent No. 5,240,653).

Ramkissoo teaches a device including a container 30 including different air treatment mediums. Note specifically that Ramkissoo teaches use of perfumed particles in basket 12a and a liquid deodorant in basket 12c. As Ramkissoo discloses that air fresheners may be used as a media, it would have been obvious to use more than one fragrance/perfume in the container.

Response to Arguments

8. Applicant's arguments filed 16 November 2004 have been fully considered but they are not persuasive.

9. Applicant's chief argument is that the combination of references does not teach use of a perfume having a boiling point of 250 °C or higher and a ClogP of greater than 3,

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as required by every independent claim. However, as set forth in the rejection *supra*, Lee et al evidences the use of cinnamaldehyde, which fulfills the perfume requirements.

10. All other arguments have been addressed in full by the rejection.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Wednesday (7:15 am-4:45 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 571-272-1275. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Leigh McKane
Primary Examiner
Art Unit 1744

elm
22 December 2004